IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 1462 of 2000

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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NARENDRAKUMAR M PARMAR - Petitioner(s)
Versus
SECRETARY & 2 - Respondent(s)

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Appearance :
MR JB DASTOOR for Petitioner(s) : 1,
MS ML SHAH for Respondent(s) : 1 - 3.
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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 10/03/2006

ORAL JUDGMENT

1.In the present petition, the petitioner is seeking pensionary benefits from the respondents.

2.Short facts leading to the present petition are as

follows:

2.1The petitioner was working as an Engineer in the Public Health and Family Welfare Department of the Government of Gujarat. The petitioner was appointed on 15.12.73. In April 1991, the petitioner was desirous of contesting Parliamentary election. He, therefore, tendered his resignation by letter dated 22.4.91. In the said letter, he tendered his unconditional resignation from Government service. The resignation letter was accepted by the employer by the order dated 24.4.91 which was communicated to the petitioner vide communication of the same date. In the order accepting resignation of the petitioner, it is stated that the same is accepted pursuant to his letter dated 22nd April 1991. It was also provided that the same is subject to further proceedings in a criminal case and certain departmental inquiries pending against the petitioner.

2.2It appears that on 23rd April 1991, the petitioner had written a letter suggesting that as a special case, he may be permitted to retire on voluntary retirement basis and his benefits be released.

2.3Since the respondents treated the petitioner as having tendered his resignation and since no pensionary benefits of the petitioner were released, the

petitioner has filed the present petition.

3. It is the case of the petitioner that immediately after having tendered his resignation on 22nd April 1991, he had indicated to the Authorities his desire to opt for voluntary retirement. It is the case of the petitioner that the respondents ought to have accepted such a request which was made almost immediately after tendering the resignation. It is also the case of the petitioner that even if it is considered that the petitioner had tendered his resignation, he is entitled to receive pensionary benefits.

4. The respondents have appeared and filed affidavit in reply opposing the petition. It is contended that the petitioner cannot claim pensionary benefits. He had not completed 20 years of qualifying service for seeking pensionary benefits.

5. Learned advocate Shri Dastoor appearing for the petitioner submitted that the respondents erred in not releasing the pensionary benefits of the petitioner. He urged that the petitioner shortly after tendering his resignation tendered his notice for voluntary retirement. He submitted that the same ought to have been accepted by the Authorities and the petitioner should have been paid his pensionary benefits. It is

additionally contended that the petitioner is entitled to receive pension even if it is treated that he left the service through resignation. It is his contention that resignation and voluntary retirement are synonyms and that even in case of resignation, the respondents cannot refuse to release the pensionary benefits of the petitioner. It was further contended that there is no provision in the Bombay Civil Service Rules (BCSR) which would forfeit the service rendered by the employee after his resignation.

6. In support of his contention, learned advocate for the petitioner placed reliance on several decisions to which I will advert to at a later stage. At this stage, it may be noted that the petitioner tendered his resignation by the letter dated 22.4.91. It was this letter of resignation which was accepted by the employer on 24.4.91. On the basis of said resignation having been accepted, the petitioner contested the election. Perhaps, in absence of acceptance of resignation, the petitioner would have been disqualified from contesting the election. Be that as it may, the fact remains that it was this letter of 22nd April 1991 through which the petitioner resigned from service which the employer accepted. The petitioner

made no grievance about this aspect of the matter for years together. It is now the stand of the petitioner that on 23rd April 1991, he had indicated his desire to opt for voluntary retirement and he, therefore should be held entitled to receive pension. I am afraid such a stand cannot be accepted for variety of reasons. Firstly, as noted, the petitioner tendered his resignation on 22nd April 1991. It was this resignation offer which was accepted by the employer. Secondly, the petitioner did not raise any objection about the stand of the respondents for nearly 10 years after the event and thirdly, the indication of the petitioner that he wished to opt for voluntary retirement was not accepted by the Government. Without the formal acceptance by the employer, the petitioner cannot treat himself to have voluntarily retired from service. On all these grounds, it is not possible to accept the contention of the learned advocate for the petitioner that the petitioner should be treated to have opted for voluntary retirement.

7. The contention of the petitioner that even in case of resignation, he is entitled to receive pension cannot be accepted. Firstly, resignation cannot be equated with voluntary retirement. Law on this aspect of the

matter is sufficiently clearly laid down by the Hon'ble Supreme Court in recent decisions. Further, the petitioner had put in less than 20 years of service before he left the service of Government. Even if resignation is to be equated with voluntary retirement, the petitioner cannot avail of the pensionary benefits unless and until he had put in sufficient number of years of qualifying service. In the present case, the respondents have filed affidavit and stated that minimum of 20 years of service is necessary before a person proceeding on voluntary retirement can seek pension. Admittedly, the petitioner did not have 20 years of service at his credit before he left the service through resignation. On that count also, the petitioner cannot claim pensionary benefits.

8. Learned advocate for the petitioner has placed reliance on the decision of the Hon'ble Supreme Court in the case of Nand Keshwar Prasad v. Indian Farmers Fertilizers Coop Ltd., (1998) 5 SCC 461 in support of his contention. In the said decision, however, the Hon'ble Supreme Court was considering the situation whereby an employee having once tendered resignation/voluntary retirement notice was seeking to withdraw the same before the actual event arrived. The

ratio laid down in the said decision, therefore, is not applicable in the facts of the present case.

9. Reliance was placed on the decision of Hon'ble Supreme Court in the case of M/s. J.K.Cotton Spg. & Wvg. Mills Co. Ltd., Kanpur, v. State of U.P., AIR 1990 SC 1808 wherein the Hon'ble Supreme Court was pleased to come to the conclusion that an employee who proceeds on voluntary retirement cannot be stated to have been retrenched. The ratio laid down therein has no application to the facts of the present case.

10. Reliance was also placed in the case of Yashwant Hari Katakkar v. Union of India, (1996) 7 SCC 113 wherein the Hon'ble Supreme Court granted pensionary benefits to a person who was in quasi-permanent service of the Government was made to retire prematurely. The above decision, has no application in the facts of the present case. Reliance was also placed on the decision of the Hon'ble Supreme Court in the case of Power Finance Corporation Ltd v. Pramod Kumar Bhatia, (1997) 4 SCC 280 wherein the Hon'ble Supreme Court held that in case of conditional acceptance of voluntary retirement, the retirement would not become effective unless the employee is relieved from duty after complying with the condition. In the present case, the

petitioner was relieved from his duty after acceptance of offer of resignation. It was on this basis that the petitioner contested the election. The petitioner has not made out any case to suggest that acceptance of his resignation was invalid or illegal. Reliance was also placed on the decision of the Hon'ble Supreme Court in the case of Reserve Bank of Inida v. Cecil Dennis Solomon, (2004) 9 SCC 461. In the said decision, the Hon'ble Supreme in fact highlighted the difference between the concept of resignation and voluntary retirement. I do not see how the said decision would help the petitioner. Reliance was also placed on the decision of the Hon'ble Supreme Court in the case of Union of Inida v. P.S.Bhargava, (1997) 2 SCC 28 wherein the Hon'ble Supreme Court made available pensionary benefits to an Army Officer who had after completing qualifying years of service left the service on voluntary resignation basis.

11. Learned advocate for the petitioner has also relied on the resolution dated 31st July 1987 and in particular condition No.4.3 therein. The said condition, however, covers a situation where an employee retires and not leaves the service either through resignation or voluntary retirement. It makes provision that a

retiring employee would receive pro-rata pension after completing of 10 years of qualifying service. The petitioner cannot seek benefit of the said provisions.

12. The law on the concept of voluntary retirement vis-a-vis resignation of an employee has been crystallized by number decisions of the Hon'ble Supreme Court.

13. As noted earlier, the petitioner resigned from service. His termination of service was, therefore not on account of either superannuation or upon voluntary retirement. It is a settled law by the Hon'ble Supreme Court that an employee who resigns from service cannot be equated with one who has been allowed to retire on voluntary retirement basis.

14. In the case of Jaipal Singh v. Sumitra Mahajan, (2004) 4 SCC 522, the Hon'ble Supreme Court observed that there is a difference between voluntary retirement and resignation and both convey different connotations. It was observed that the basic distinction between the two is that in case of resignation it can be tendered at any time but in the case of voluntary retirement it can only sought for after rendering prescribed period of qualifying service. In the case of resignation, a prior permission is not mandatory while in the case of voluntary retirement, permission of the employer is a

requisite condition.

14.1 In the case of RBI v. Cecil Dennis Solomon, (2004) 9 SCC 461, the Hon'ble Supreme held as under:

> “10. In service jurisprudence, the expressions, “superannuation”, “voluntary retirement”, “compulsory retirement” and “resignation” convey different connotations. Voluntary retirement and resignation involve voluntary acts on the part of the employee to leave service. Though both involve voluntary acts, they operate differently. One of the basic distinctions is that in case of resignation it can be tendered at any time, but in the case of voluntary retirement, it can only be sought for after rendering prescribed period of qualifying service. Other fundamental distinction is that in case of the former, normally retiral benefits are denied but in case of the latter, the same is not denied. In case of the former, permission or notice is not mandated, while in case of the latter, permission of the employer concerned is a requisite condition. Though resignation is a bilateral concept, and becomes effective on acceptance by the competent authority, yet the general rule can be displaced by express provisions to the contrary. In Punjab National Bank v. P.K. Mittal on interpretation of Regulation 20(2) of the Punjab National Bank Regulations, it was held that resignation would automatically take effect form the date specified in the notice as there was no provision for any acceptance or rejection of the resignation by the employer. In Union of India v. Gopal Chandra Misra, it was held in the case of a judge of the High Court having regard to Article 217 of the Constitution that he has a unilateral right or privilege to resign his office and his resignation becomes effective form the date which he, of his own volition, chooses. But where there is a provision empowering the employer not to accept the resignation, on certain circumstances e.g. pendency of disciplinary proceedings, the employer can exercise the power.”

14.2In the decision of Union of India v. Braj Nandan Singh, 2005 AIR SCW 5383, the Hon'ble Supreme Court

found that the person resigning from service cannot claim pensionary benefits. The contention that upon resignation, the service rendered by the employee cannot be wiped out for entitlement of pension was negatived. In the decision of UCO Bank v. Sanwar Mal, 2004 AIR SCW 2294, the Hon'ble Supreme Court held that the employees who have resigned from service are not entitled to pension. Regulation 22 of UCO Bank (Employees) Pension Regulations which disqualified an employee who is resigning from service from seeking pension was held not arbitrary or violative of Article 14 of the Constitution of India. It was further held that the words “resignation” and “retirement” carried different meanings and an employee can resign at any point of time, even on the second day of his appointment but in the case of retirement, he retires only after attaining the age of superannuation or in case of voluntary retirement on completion of qualifying service.

15. It can thus be seen that for the purpose of seeking pensionary benefits, it is open for the employer to treat resignation differently from voluntary retirement.

16. In view of the discussion, the petitioner has not made

out any case for interference. The petition is therefore, rejected. Rule is discharged with no order as to costs.

(Akil Kureshi, J.)

(vjn)